

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TANYA FLENORY,

Plaintiff,

v.

MACY'S INC., a corporation; and
MACY'S RETAIL HOLDINGS, LLC, a
limited liability company,

Defendants.

Case No. 1:23-cv-00297-JLT-SKO

ORDER TO SHOW CAUSE CONCERNING
SUBJECT MATTER JURISDICTION

(Doc. 1)

On February 27, 2023, Tanya Flenory filed a complaint against Macy's Inc. and Macy's Retail Holdings, LLC asserting four claims under California's Fair Employment and Housing Act, California Government Code § 12940 *et seq.*, and a related tort claim for constructive discharge. (Doc. 1 at 1.) Flenory asserts this Court has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1332. (*Id.* at 2.) The burden of establishing subject matter jurisdiction "rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Romero v. Securus Techs., Inc.*, 216 F. Supp. 3d 1078, 1085 (S.D. Cal. 2016) ("As the party putting the claims before the court, Plaintiffs bear the burden of establishing jurisdiction."). The Court may consider the issue of subject matter jurisdiction *sua sponte* at any time during the proceeding, and if the Court finds "it lacks subject matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3); *Scholastic Ent., Inc. v. Fox Ent. Grp., Inc.*, 336

1 F.3d 982, 985 (9th Cir. 2003). As described below, the complaint fails to sufficiently plead
2 federal jurisdiction.

3 First, 28 U.S.C. § 1331 grants federal courts jurisdiction “of all civil actions arising under
4 the Constitution, laws, or treaties of the United States.” The general rule, referred to as the “well-
5 pleaded complaint rule,” is that a civil action arises under federal law for purposes of § 1331
6 when a federal question appears on the face of the complaint. *Caterpillar Inc. v. Williams*, 482
7 U.S. 386, 392 (1987). “[F]ederal jurisdiction depends solely on the plaintiff’s claims for relief and
8 not on anticipated defenses to those claims.” *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th
9 Cir. 2020) (internal quotations omitted). Because Flenory’s claims all arise under California law,
10 and she does not assert a claim under any federal law, the complaint fails to plead jurisdiction
11 under § 1331. See *Stearns v. Stearns*, 2022 WL 17832259, at 1 (W.D. Wash. Dec. 21, 2022)
12 (issuing order to show cause regarding subject matter jurisdiction where plaintiff failed to
13 “identify a single federal statute or constitutional provision under which he brings his claims”).

14 Second, 28 U.S.C. § 1332(a) provides jurisdiction over certain actions between citizens of
15 different states. Complete diversity is a requirement of 28 U.S.C. § 1332. Thus, the “citizenship
16 of each plaintiff [must be] diverse from the citizenship of each defendant.” *Caterpillar Inc. v.*
17 *Lewis*, 519 U.S. 61, 68 (1996). For diversity purposes, the citizenship of an individual is
18 “determined by her state of domicile, not her state of residence.” *Kanter v. Warner-Lamber Co.*,
19 265 F.3d 853, 857 (9th Cir. 2001). Corporations are citizens of their states of incorporation and
20 their principal places of business. 28 U.S.C. § 1332(c); *Harris v. Rand*, 682 F.3d 846, 850 (9th
21 Cir. 2012). A limited liability company (LLC) is the citizen of every state where its owners or
22 members are citizens, regardless of its state of formation or principal place of business; the
23 citizenship of all of its members must be alleged. *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606,
24 611-12 (9th Cir. 2016).

25 Flenory did not allege the citizenship of the members or owners of Macy’s Retail
26 Holdings, LLC. The complaint simply states the LLC “has its corporate offices and principal
27 place of business location in Ohio” and that it operates stores in California. (Doc. 1 at 2-3.)
28 “Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able to

1 allege affirmatively the actual citizenship of the relevant parties.” *Kanter*, 265 F.3d at 857.
2 Because Flenory did not allege the citizenship of the LLC members or owners, the complaint fails
3 to plead complete diversity to establish jurisdiction under § 1332. *See Grayson Serv., Inc. v.*
4 *Crimson Res. Mgmt. Corp.*, 2015 WL 6689261, at *3 (E.D. Cal. Oct. 28, 2015) (granting motion
5 to dismiss where plaintiff’s second amendment complaint was “devoid of any mention of the
6 citizenship of the owners of the LLC” because “failure to specify the state citizenship of the
7 parties is fatal to the assertion of diversity jurisdiction”). Accordingly,

- 8 1. Within **fifteen days** of the issuance of this order, Flenory **SHALL** show cause in
9 writing why her claims should not be dismissed for lack of subject matter jurisdiction.
- 10 2. Alternatively, within **fifteen days**, Flenory may either file an amended complaint that
11 contains allegations addressing the court’s jurisdiction and the issues identified in this
12 order or may voluntarily dismiss her claims.

13 **Failure to comply with this order will result in dismissal with prejudice of all claims**
14 **due to lack of jurisdiction.**

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16 IT IS SO ORDERED.

17 Dated: March 1, 2023


UNITED STATES DISTRICT JUDGE

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